

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ADVANCED OPTICS ELECTRONICS, INC.,
and BIOMODA, INC.,

Plaintiffs,

v.

No. CIV 07-0855 JB/GBW

LESLIE S. ROBINS, ALVIN D. ROBINS,
and JOHN W. KEARNS,

Defendants.

-- and --

LESLIE S. ROBINS,

Counterclaimant,

vs.

BIOMODA, INC.,

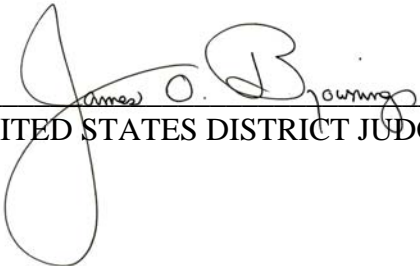
Counter-Defendant.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on the Plaintiff's Motion for Entry of Final Judgment, filed January 20, 2011 (Doc. 163)("Motion"). The primary issue is whether the Court should grant Plaintiff Biomoda, Inc.'s request to voluntarily dismiss with prejudice its pending, unresolved claims and for entry of final judgment in the amount of \$35,000.00, plus post-judgment interest pursuant to 28 U.S.C. § 1961(a), against Defendant Alvin D. Robins. Before filing this Motion, counsel for Biomoda inquired whether A. Robins concurs in or opposes this motion. In response, A. Robins filed his Motion to Reconsider and Set Aside Partial Summary Judgment. Biomoda understands this to be A. Robins' opposition to entry of a final judgment on the \$35,000.00

award. A. Robins has not, however, opposed this Motion -- in writing or otherwise -- or stated an objection to the dismissal of all other pending, unresolved claims. See D.N.M.LR-Civ. 7.1(b)(“The failure of a party to file and serve a response in opposition to a motion within the time prescribed for doing so constitutes consent to grant the motion.”); D.N.M.LR-Civ. 7.1(b)(“Except as otherwise provided for in the FED. R. CIV. P., a response must be served and filed within fourteen (14) days after service of the motion, including a motion for summary judgment.” (citing Fed. R. Civ. P. 56(c)(1))). The Court granted Biomoda partial summary judgment and awarded it damages in the amount of \$35,000 with post-judgment interest against Robins in its December 16, 2010 Memorandum Opinion and Order, see Doc. 132. The Court denied Robins’ Motion to Reconsider and Set Aside Partial Summary Judgment, filed January 18, 2011 (Doc. 162), in its March __, 2011 Memorandum Opinion and Order. See Doc. __. Accordingly, the Court grants the Motion to the extent that it seeks to dismiss all remaining claims in the case. And there not being any further claims remaining in this case, or motions for the Court to consider, it is appropriate to enter a final judgment. .

IT IS ORDERED that Plaintiff’s Motion for Entry of Final Judgment, filed January 20, 2011 (Doc. 163), is granted.



UNITED STATES DISTRICT JUDGE

Parties and Counsel:

Phil Krehbiel
Albuquerque, New Mexico

Attorney for Plaintiff Advanced Optics Electronics, Inc.

Spencer Reid
Thomas C. Bird
Christina Muscarella Gooch
Keleher & McLeod
Albuquerque, New Mexico

Attorneys for Plaintiff and Counter-Defendant Biomoda, Inc.

Sam Bregman
Eric Loman
The Bregman Law Firm, PC
Albuquerque, New Mexico

Attorneys for Defendant and Counterclaimant Leslie S. Robins

John W. Kearns
Coral Gables, Florida

Defendant pro se

Alvin D. Robins
La Porte, Texas

Defendant pro se